

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CASCADE MANUFACTURING SALES,
INC., a Washington corporation,

Plaintiff,

v.

PROVIDNET CO. TRUST, a Washington
trust dba WORMSWRANGLER.COM;
BARRY RUSSELL, an individual,

Defendants.

No. C08-5433RBL

DEFENDANT'S MOTION FOR
CLARIFICATION AND
RECONSIDERATION OF ORDER ON
MOTION FOR PRELIMINARY
INJUNCTION

**Note on Motion Calendar:
December 12, 2008**

I. RELIEF REQUESTED

COMES NOW DEFENDANTS, BARRY RUSSELL and PROVIDNET CO TRUST, by and through their attorney, THOMAS J. WESTBROOK, and moves for clarification and reconsideration of the Order on Motion for Preliminary Injunction dated November 12, 2008. This relief is based upon the Plaintiff's Motion for Preliminary Injunction, the Court's Order on Motion for Preliminary Injunction, the associated affidavit of Thomas J. Westbrook with attachments and the files and records herein. Defendant is asking the Court to reconsider its ruling by providing clear guidance to Defendant on the issues presented below.

DEFENDANT'S MOTION FOR
CLARIFICATION AND RECONSIDERATION
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II. STATEMENT OF ISSUES

A. Whether the Preliminary Injunction extends beyond the Worm Factory mark of Plaintiff to the Gusanito Factory of Worms mark owned by Sandalwood Enterprises.

B. The Court did not set a date for compliance as to when Defendants must have the Worm Factory mark purged from their website and related marketing and training collateral.

III. GROUNDS

The Order entered does not state in reasonable detail the specific acts restrained or required of Defendant; only that "The Plaintiff's Motion for a Preliminary Injunction is GRANTED." Defendant does not want to expose itself to any possible retaliatory contempt of court action by Plaintiff as to the issues presented above.

IV. STATEMENT OF FACTS

Defendant has begun a good faith effort to comply with the Order by removing all references to the Worm Factory mark from its websites and marketing and training collateral. This is not a small job and Defendant cannot reasonably comply in less than ninety (90) days. (See attachment to Westbrook Decl., Exhibit A and D). Plaintiff is threatening Defendant with contempt of court if Defendant does not immediately cease and desist all use of the Worm Factory mark (See attachment to Westbrook Decl., Exhibit B).

Defendant believes the Order restrains it only from using the Worm Factory mark. Plaintiff claims the Order extends beyond restraining Defendant from using the Worm Factory mark and has threatened Defendant with a Motion for Contempt of Court if Defendant does not refrain from using the Gusanito Factory of Worms mark (See

1 attachment to Westbrook Decl., Exhibit B).

2 Sandalwood Enterprises owns the Gusanito Factory of Worms mark. The
3 USPTO examining attorney has performed a Trademark Office records search and has
4 found no similar registered or pending mark which would bar registration under
5 Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 704.02. (See
6 Westbrook Decl., Exhibit C).

7
8 Defendant Barry Russell is the person that made application for Sandalwood
9 Enterprises. Defendant Providnet uses the Gusanito Factory of Worms mark as well as
10 is referenced in Footnote No. 1 of the Court's Order on Motion for Preliminary
11 Injunction.

12 13 VI. LEGAL AUTHORITY AND ARGUMENT

14 FRCP 65(d)(1) provides that the contents and scope of every injunction and
15 restraining order must state its terms specifically and describe in reasonable detail the
16 act or acts restrained or required.

17
18 Defendant reads the Order as stating that Defendant is restrained from using the
19 Worm Factory mark; nothing more. Plaintiff claims the Order also restrains Defendants
20 from using the Gusanito Factory of Worms mark.

21 Plaintiff's Motion for Preliminary Injunction claims that Plaintiff is the owner of the
22 Worm Factory mark and requests an injunction preventing Defendant from unlawfully
23 using the mark of Defendant pending resolution of this lawsuit. There is no reference to
24 enjoining the use by Defendant of the Gusanito Factory of Worms mark.

25
26 As stated above, Defendant has received an initial Trademark Office
27 determination from the USPTO that there is no similar registered or pending mark which

1 would bar registration under Trademark Act. Obviously the Worm Factory mark is
2 registered with the USPTO and the examining attorney for the Gusanito Factory of
3 Worms mark did not find that the two marks were conflicting with one another.

4 The Court's Order on Motion for Preliminary Injunction noted the use of the
5 Gusanito Factory of Worms mark by Providnet, yet did not mention that mark in any
6 other manner in the ruling and did not find that the Gusanito Factory of Worms mark
7 was similar to or likely to cause customer confusion with Plaintiff's mark.
8

9 VI. CONCLUSION

10 Defendant is entitled to know with reasonable detail the specific acts restrained
11 or required of Defendant as requested above without having to defend itself in a
12 contempt of court action brought by Plaintiff. Reconsideration by clarification should be
13 granted to enable Defendant to know exactly what actions must be taken and when they
14 must be taken. Defendant requests the Court to clarify its Order by ruling that the
15 Preliminary Injunction does not extend to the Gusanito Factory of Worms mark and that
16 Defendant has ninety (90) days to comply with the restraining order regarding the Worm
17 Factory mark.
18
19

20 Respectfully submitted this 23rd day of November, 2008.

21
22 THOMAS J. WESTBROOK, PLLC
23 /S/ Thomas J. Westbrook

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Certificate of Service

The undersigned certifies that on November 23, 2008 he electronically filed the above DEFENDANT'S MOTION FOR CLARIFICATION AND RECONSIDERATION and associated DECLARATION OF THOMAS WESTBROOK with the Clerk of the Court using the Court's CM/ECF system which will send notification of such filing to the following:

Venkat Balasubramani
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Dated this 23rd day of November, 2008.

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